

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

1	HANAA B. ABADEER)
)
2	LATIF S. ABDELSAYED)
)
3	YARE ABDIRAHMAN)
)
4	ABDIRAHMAN (MURSAL) M. ABDULLAHI)
)
5	WAL M. ABIYAM)
)
6	DIRIE A. ABSHIR)
)
7	WUILIAN AGUILA)
)
8	HALIMO A. AHMED)
)
9	AKUOL M. AKOT)
)
10	ABDIRIZAK ALAS)
)
11	ROSA ALEMAN DE MAJANO)
)
12	ABBAS AL-JLE)
)
13	ANA R. ALVARADO)
)
14	SOFIA ALVARADO)
)
15	JOSE G. AMAYA)
)
16	EMIR A. ANGEL)
)
17	JERONIMO ANGUIANO)
)
18	GAALOW ANNIMAR)
)
19	ALIZABETH Z. AONA)
)
20	EDDY R. ARANDA)
)
21	AMALIA ARBELAEZ)

22 RICARDO ARBELAEZ

23 EVERARDO ASPERA

24 MAGDY ATTALLA

25 NAGLA A. ATTALLA

26 RAQUEL AYALA

27 JANICE S. BAGWELL

28 JERRY E. BARLOW

29 MAURICIO D. BATRES

30 ROXANA BATRES

31 BETTY J. BAXTER

32 ANTONIO BENITEZ

33 GARANG D. BOL

34 MARIA BONILLA

35 SANDY J. BRANCH

36 MICHAEL W. BREECE

37 JOYCE A. BRENT

38 RONALD BREWER JR.

39 BRICEIDA M. BRIZUELA

40 DARRELL M. BRULE

41 KHOA T. BUI

42 ANDRIA W. BUTLER

43 BIANCA R. CARABANTES

44 JOEL CARAPIA

91 JETON GASHI

92 CARIDAD L GE MARTINEZ

93 VICTOR GEICULESCU

94 MARY NAN GEORGEY

95 ELIZABETH GONZALEZ

96 LORENA Y. GONZALEZ

97 RAQUEL GONZALEZ

98 LUCAS GONZALEZ AYALA

99 ANNIE C. GOODWIN

100 FELIX GUTIERREZ

101 AFAF H. HANNA

102 LINDA HEATHERLY

103 JOSE JUAN CARLOS HENRIQUEZ

104 DANI A. HERNANDEZ

105 FRANCISCA N. HERNANDEZ

106 MERCEDES HERNANDEZ

107 RITA HERNANDEZ

108 WILLIAM F. HIGH

109 GEORGE H. HILL

110 PHOUNG HOANG

111 EDWARD E. HOBSON

112 TONYA R. HOLT

113 DIEMLE T. HUYNH

114 MIKHAEL R. ISKANDER

115 DIXAN JAIME

116 DIXANGEL JAIME

117 DARREN JOHNSTON

118 EDWARD W. JONES

119 ETHEL M. JONES

120 JOHNNY JONES

121 LOLA D. JONES

122 JOHN M. KAK

123 NASRELDIN M. KALADIA

124 REBA F. KELLY

125 SANDY KEOPANYA

126 THAO X. KITTLE

127 MALUSH KOLSHI

128 NIXHARE KOLSHI

129 GADWAL KORI

130 ABDU KUWA

131 DIEM N. LAM

132 HONG THI LAM

133 NYAYIEN LEAR

134 DAVID W. LIR

135 BERNARDO N. LOPEZ

136 JOSE A. LORENZO

160 ROSA MOLINA

161 BERTA MORALES

162 LUIS O. MORALES

163 MIGUEL R. MOREJON

164 MIGUEL MOREJON- OLLERO

165 GOMEZ C. MOREY

166 ALICIA MURGUIA

167 ABDELSEED E. MURRAN

168 JOHNSON A. NADER

169 AMERIKA NAVA

170 CALIN NECULCEA

171 LAN NGUYEN

172 LE T. NGUYEN

173 LOC T. NGUYEN

174 NGAN B. NGUYEN

175 PHUC B. NGUYEN

176 XEM NGUYEN

177 MONIRA F. NOSIR

178 ABDISALAN M. OMAR

179 ANA ORDONEZ

180 JOSE M. ORELLANA

181 NORMA G. ORTEZ

182 MARIA ORTIZ

183 ROCIO M. ORTIZ

184 MICHAEL OTHUR

185 ROSALIND A. OWENS

186 NOE A. PADILLA

187 JORGE L. PARDO

188 JUAN PEDROZA

189 MARIA D. PEDROZA

190 MARIA J. PEDROZA

191 ION PELE

192 FULGENCIO H. PENATE

193 PHYLLIS PENDLETON

194 JOSE C. PEREZ

195 DARAPHONE PHIMMACHACK

196 INTHA PHIMMACHACK

197 POUTHASONE PHIMMACHACK

198 SOMPHOU PHIMMACHACK

199 ANA D. PORTILLO

200 ALIUSKA PRIETO

201 AMINA QALIB

202 NASTEHA QALIB

203 SUADO QALIB

204 LORENA I. QUEZADA

205 MARITZA RAMOS

229 PHAIBOON SIRITHAI)
)
230 VANNY SISONGKHAM)
)
231 DANNY SMITH)
)
232 WELAI SMITH)
)
233 IDELMIS SOCA)
)
234 LUZ MARIA SOLIS)
)
235 STELLA L. SPILLERS)
)
236 COSTEL STOIAN)
)
237 DAN I. STOICULESCU)
)
238 DANA I. STOICULESCU)
)
239 BRIGIDO SUAREZ NUNEZ)
)
240 TUYEN Q. TA)
)
241 JOHN J. TAY)
)
242 ROGER D. TAYLOR)
)
243 THOMAS W. TERRY)
)
244 CONCEPCION TICAS)
)
245 YEN CHI T. TO)
)
246 GABRIEL TONG)
)
247 LUIS A. TORRES)
)
248 MARIA TORRES GONZALEZ)
)
249 DUC N. TRAN)
)
250 ROILAN ULLOA)
)
251 OLGA L. ULLOA-HERNANDEZ)

252 SANTOS URIAS

253 CECILIO VALLE

254 CONSUELO VASQUEZ

255 DANIEL VASQUEZ

256 IDANIA VAZQUEZ

257 LUIS R. VILLEGAS

258 VALENTIN VINCA

259 GEORGE C. VIVEROS

260 THOAI VY

261 NADIA WASEF

262 LOLITA D. WHITE

263 TYSON C WHITE

264 DENISE J. WILLIAMS

265 JAMES R. WILLIAMS

266 VERNON WILLIAMS

267 ANTHONY WOODARD

268 MYRANDA C. WOODARD

269 KHAMPHAN XAYYASITH

270 THONGKHAM XAYYASITH

271 ORBELINA YANES

272 YOEUN YI

273 PETER P. YIECH

274 YOEUTH YOEUN

275 ADEL K. YOUSSEF

276 CORINA ZAVALA

277 RIGOBERTO ZAVALA-JOVEL

278 MENGISTU ZERIHUN

Plaintiffs,

v.

Tyson Foods Inc.,

Defendant.

No. _____

COMPLAINT

1. The plaintiffs are employees or former employees of the defendant, and they bring this action as a collective action in accordance with 29 U.S.C. § 216(b) of the Fair Labor Standards Act (FLSA) against the defendant on behalf of themselves and all others similarly situated because of defendant's unlawful deprivation of plaintiffs' rights to overtime compensation. Plaintiffs seek a declaratory judgment under 28 U.S.C. § 2201 and compensation, damages, equitable and other relief available under the FLSA, as amended, 29 U.S.C. § 201 et seq.

JURISDICTION AND VENUE

2. Jurisdiction is conferred on this Court by 29 U.S.C. § 216(b), 28 U.S.C. § 1331, and 28 U.S.C. § 1337. Venue lies within this district pursuant to 28 U.S.C. § 1391.

3. At all times material herein, each of them has been employed by the defendant Tyson Foods, Inc. (hereinafter "Tyson") in positions that the defendant has entitled Trimmer, Styler, Trainer, Inspector, Tray Transfer employee, Pump Operator, Machine Operator, Bag Opener and other hourly positions. Plaintiffs are identified in the caption of the Complaint and have given their written consent to be party plaintiffs in this action pursuant to 29 U.S.C. § 216(b). Such consents are appended to the Complaint. Plaintiffs bring this action as a collective action on behalf of themselves and all others similarly situated in accordance with 29 U.S.C. § 216(b).

4. Tyson is a foreign corporation who is currently licensed to do business in the State of Tennessee under the name Tyson Fresh Meats, Inc., a subsidiary of Tyson Foods, Inc. Tyson's registered agent for service of process is CT Corporation Systems, 800 S. Gay Street, Suite 2021, Knoxville, Tennessee 37929.

5. Defendant Tyson is an "employer" within the meaning of 29 U.S.C. §203(d) and a "person" within the meaning of 29 U.S.C. § 203(a).

6. At all times material to this action, defendant Tyson has been an enterprise engaged in commerce as defined by 29 U.S.C. § 203(r)(1), and its annual dollar business volume has exceeded \$500,000.

7. At all times material herein, defendant Tyson has been actively conducting business in the State of Tennessee.

CLAIM

8. At all times material herein, plaintiffs have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. § 201 et seq.

9. At all times material herein, plaintiffs have worked in excess of the hourly levels specified in the FLSA, 29 U.S.C. § 207. As a result, at all times material herein, plaintiffs have been entitled to overtime compensation at a rate of not less than one and one-half times their regular rate of pay for the hours of overtime they have worked.

10. 29 U.S.C. § 207(a)(1) provides that employees shall be paid overtime compensation at a rate of not less than one and one-half times their regular rate of pay for hours worked in excess of 40 hours per work week. Since defendant's facility located in Goodlettsville, Tennessee began operations in or about April 2001, defendants have violated, and continue to violate, 29 U.S.C. § 207(a)(1) by failing and refusing to compensate plaintiffs and other hourly employees working on the production floors and in other departments for their hours of work in excess of 40 hours per work week at a rate of not less than one and one-half times the regular rate at which the plaintiffs are employed.

11. Defendant has deprived the plaintiffs and other similarly situated employees of overtime compensation by failing to compensate them for the time that they spend engaged in pre-shift activities which must be performed on plant premises. These activities include but are not limited to: properly donning the frock; retrieving and donning a hairnet, beard net, hard hat and hearing protection from the individual worker's locker; retrieving a combination of the

following items from the individual worker's locker: safety glasses, green rubber gloves, plastic arm sleeves, Plexiglass forearm guard, mesh glove, belly guard, rubber apron, skinner gloves, scabbard, steel, hook, and hook holder; carrying all equipment retrieved from the locker room on the second floor down two flights of stairs to the production hallway; waiting in the production hallway for supervisors to open the production floor doors; washing hands in sinks in production hallway; sanding steel; walking through sanitizing foot bath into the production floor; sanitizing all non-fabric personal protective equipment (PPE) and other required items (i.e., plastic arm sleeves, green rubber gloves, Plexiglass forearm guard, hearing protection, hard hat, mesh glove, belly guard, rubber apron, skinner gloves, scabbard, steel, hook, and hook holder) by dipping them in a sanitation tank and shaking them dry; donning all sanitized non-fabric PPE and other required items; collecting and donning cotton gloves, cut resistant gloves, cut resistant sleeves, and latex gloves; performing tasks such as bringing trays to the work station, wiping down work station, collecting knives from the knife cart, and sharpening knives; and walking to work station and waiting for first piece of meat to arrive. These activities are all part of the continuous workday and are compensable.

12. Defendant has deprived the plaintiffs and other similarly situated employees of overtime compensation by failing to compensate them for the time that they spend engaged in post-shift activities which all must be performed on plant premises. These activities include but are not limited to: washing equipment; sanitizing all non-fabric PPE and other required items (i.e., plastic

arm sleeves, green rubber gloves, Plexiglass forearm guard, hearing protection, hard hat, mesh glove, belly guard, rubber apron, skinner gloves, scabbard, steel, hook, and hook holder); walking up two flights of stairs to the locker room; doffing the hard hat, hair net, beard net, and hearing protection; storing a combination of the items (i.e., safety glasses, green rubber gloves, plastic arm sleeves, Plexiglass forearm guard, mesh glove, belly guard, rubber apron, skinner gloves, scabbard, steel, hook and hook holder) in the individual worker's locker; waiting in line to exchange the frock; and doffing and exchanging the frock. These activities are all part of the continuous workday and are compensable.

13. Defendant has also deprived the plaintiffs and other similarly situated employees of overtime compensation by failing to compensate them for the time they spend performing work during their 30 minute uncompensated meal period. Defendant deducts 30 minutes per day from each hourly employee's paycheck regardless of whether the employee has a meal break or is relieved of duty for the full 30 minutes. Hourly employees who work on the production floors and in other departments do not clock out for lunch. The time is automatically deducted despite the fact that hourly employees do not receive a full 30 minute break. Production employees must return to the floor at a set time regardless of the time that they actually leave for their meal break. Hourly production employees rarely, if ever, leave for lunch at the start of the 30 minute meal break. Employees are not allowed to leave the line as long as there is meat on the line. Moreover, employees must doff and don most of their gear, equipment and clothing during their uncompensated meal break.

14. Defendant's violations of the FLSA as alleged herein have been done in a willful and bad faith manner.

15. As a result of the aforesaid willful violations of the FLSA, overtime compensation has been unlawfully withheld by defendant from plaintiffs and similarly situated persons for which the defendant is liable pursuant to 29 U.S.C. § 216(b), together with an additional equal amount as liquidated damages, as well as interest, reasonable attorneys' fees and the costs of this action.

16. On March 31, 2008, in a case with identical facts, this Court found that the donning and doffing of the frocks themselves were principal activities that marked the beginning and end of the continuous workday. *Jordan v. IBP*, 542 F. Supp. 2d 790, 809 (M.D. Tenn. 2008). This Court's 2008 decision addressed the precise issues raised in this complaint, was necessary to the outcome of the prior proceeding, and resulted in a final judgment on the merits. Defendant Tyson had a full and fair opportunity to litigate the issue in that 2008 proceeding.

17. The employment and work records for the plaintiffs are in the exclusive possession, custody, and control of defendant Tyson, and plaintiffs are unable to state at this time the exact amount owing to each of them. Defendant Tyson is under a duty imposed by 29 U.S.C. § 211(c) and the regulations of the U.S. Department of Labor to maintain and preserve plaintiffs' payroll and other employment records from which the amounts of the defendant's liability can be ascertained.

PRAYER FOR RELIEF

Wherefore, the plaintiffs pray that this Court grant relief against the defendant as follows:

(a) Enter a declaratory judgment declaring that the defendant has willfully and wrongfully violated its statutory and legal obligations and deprived plaintiffs and all others who are similarly situated of their rights, privileges, protections, compensation, benefits, and entitlements under the law, as alleged herein;

(b) Order a complete and accurate accounting of all the compensation to which the plaintiffs and all others who are similarly situated are entitled;

(c) Award plaintiffs and all others who are similarly situated monetary damages in the form of back pay compensation and benefits; unpaid entitlements; liquidated damages under federal law equal to their unpaid compensation; plus pre-judgment and post-judgment interest;

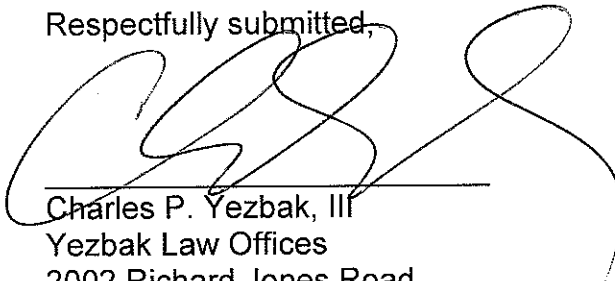
(d) Award plaintiffs and all others who are similarly situated their reasonable attorneys' fees to be paid by the defendants, and the costs and disbursements of this action; and

(e) Grant such other legal and equitable relief as may be just and proper.

JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial in this action.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'C. Yezbak, III', is written over a horizontal line.

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